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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C.

In the Matter of)	
)	
Closed Captioning and Video Description)	
of Video Programming)	MM Docket No. 95-176
Implementation of Section 305 of the)	
Telecommunications Act of 1996)	
)	
Video Programming Accessibility)	

**COMMENTS OF
THE COALITION OF PROTECTION AND ADVOCACY SYSTEMS**

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February 28, 1997

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SUMMARY

Congress' goal in enacting Section 713 of the Telecommunications Act of 1996 was to ensure that all Americans have access to video services and programming. Closed captioned programming is essential to deaf and hard of hearing individuals who rely on such programming to acquire information and knowledge and to gain access to the entertainment the rest of society enjoys. The comments of the Coalition of Protection and Advocacy Systems address proposed rules and implementation schedules for captioning of video programming to fulfill the statutory mandate of Section 713.

Due to the importance of closed captioned programming to deaf and hard of hearing individuals and Congress' goal of true accessibility, the Commission's proposal of an eight year transition period for captioning of all non-exempt new programming is too long. We propose that all non-exempt new programming be captioned within a period of four years after the effective date of the Commission's rules. Timetables should be developed to require large programmers to caption quicker than small programmers and prime time, educational, news and children's programming should be required to be captioned within a two year period.

We propose that all library programming eventually be captioned. Congress' goal of accessibility to deaf and hard of hearing individuals can only be achieved with such a requirement. However, a longer timetable should be developed for captioning than is developed for captioning of new programming. Therefore, we propose that all library programming be captioned within a seven year period. Larger programmers should be required to caption quicker than smaller programmers and children's, educational and prime time programming should be required to be captioned within five years.

Because deaf and hard of hearing individuals have the right to full accessibility to all

types of programming, not subject to the undue burden exemptions, there must be no category of programming exempt from the captioning requirements. We propose that cable access programming, instructional programming, advertisements, home shopping programming, interstitials and promotional advertisements, noninstrumental music programming and weather programming all be subject to the closed captioning requirements. Access to these types of programming is essential for deaf and hard of hearing individuals to fully participate in today's society.

We also propose in our comments that both program producers and providers be held responsible for compliance with the Commission's captioning requirements. Providers and producers can decide in their contract negotiations who ultimately captions the programming.

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WASHINGTON, D.C. 20554

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Comments
of the
Coalition of Protection and Advocacy Systems

The Coalition of Protection and Advocacy Systems ("The Coalition") submits these comments to the Notice of Proposed Rulemaking released on January 17, 1997. The Commission seeks comments on proposed rules and implementation schedules for captioning of video programming to fulfill the statutory mandate of Section 713 of the Telecommunications Act of 1996.

The Coalition is comprised of legal advocates for the disabled community. The members of the Coalition are University Legal Services-P&A, Alabama Disabilities Advocacy Program, State of Connecticut- Office of Protection and Advocacy for Persons with Disabilities, Georgia Advocacy Office, Co-Ad, Inc. of Idaho, Commonwealth of Kentucky, Department of Public Advocacy-Protection and Advocacy Division, Tennessee Protection and Advocacy, Inc., Disability Law Center of Utah, Virgin Islands Advocacy Agency, Inc., Department for Rights of Virginians with Disabilities, and West Virginia Advocates. All members are not for profit protection and advocacy agencies charged with the responsibility to provide advocacy on behalf

of persons with disabilities who reside in their respective states. The Disability Rights Council of Greater Washington, a public interest organization which advocates for the civil rights of its members and the broader disability community, supports the comments of the Coalition. The Coalition is coordinated by University Legal Services, the protection and advocacy agency for the District of Columbia.

I. Transition Schedule for Closed Captioning of New Programming

The Commission seeks comments on appropriate transition scheduling for captioning of new programming. The Telecommunications Act of 1996 states that the Commission's regulations must ensure that video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions, unless the programming falls within one of the Commission's exemptions.

Congress' goal in enacting Section 713 of the Telecommunications Act was to ensure that all Americans have access to video services and programming. Cong. Rep. No. 104-458, 104th Cong., 2d Sess. at 183-4. Congress recognized how essential captioning is, noting that video programming is now an important part of the home, school, and workplace. *Id.* at 184. According to a 1994 National Institute on Deafness and Other Communication Disorders study, more than 28 million Americans have some degree of hearing loss.¹ Three million of these individuals are children.² Four hundred fifteen out of every thousand individuals over seventy-

¹ National Association of the Deaf Comments, CC Docket No. 95-176, at 4.

² *Id.* at 7.

five years of age have some degree of hearing loss.³ The Coalition is concerned about access for deaf and hard of hearing persons due to the substantial number of such individuals within our respective states. The number of deaf and hard of hearing individuals in the Coalition's states are as follows: Alabama-290,000⁴, Connecticut-180,000⁵, District of Columbia-43,000⁶, Georgia-500,000⁷, Idaho-180,000⁸, Kentucky-371,000⁹, Tennessee-413,703¹⁰, Utah-300,000¹¹, the United States Virgin Islands-850,¹² Virginia-563,000¹³ and West Virginia-6400¹⁴. Without closed captioned programming, all of these deaf and hard of hearing individuals can become isolated

³ *Id.* at 5, *citing* 1994 Vital and Health Statistics of the U.S. Department of Health and Human Services.

⁴ Information provided by the Alabama Department of Rehabilitation Services, Services for the Deaf.

⁵ Information provided by the Commission on the Deaf and Hearing Impaired in Connecticut.

⁶ Information provided by Vocational Rehabilitation Services of the District of Columbia, Services for the Deaf and the Hard of Hearing.

⁷ Information provided by the Georgia Interpreting Services Network.

⁸ Information provided by the Idaho State Council for the Deaf and Hard of Hearing.

⁹ Information provided by the Kentucky Commission on the Deaf and Hard of Hearing, from a 1989 study.

¹⁰ Information provided by Library Services for the Hearing Impaired in Nashville, Tennessee. This statistic only includes deaf and hard of hearing individuals over the age of three.

¹¹ Information provided by the Utah Community Center for the Deaf.

¹² Information provided by the St. Croix Deaf Coalition, Inc.

¹³ Information provided by the Virginia Department for the Deaf and Hard of Hearing.

¹⁴ Information provided by the West Virginia Commission for the Deaf and Hard of Hearing.

and cut-off from the world since they lack access to the information everyone around them has. Without such captioning, deaf and hard of hearing individuals are denied essential access to information in emergency situations, as well as access to the broader array of informational, educational, and entertainment programming that is available to others. Closed captioning allows deaf and hard of hearing adults and children to develop a sense of independence when they no longer need to rely on others to gather information and knowledge.

Individuals with hearing loss, however, are not the only individuals who benefit from closed captioned programming. Such programming can benefit Americans for whom English is a second language, illiterate adults, and young children learning to read.

The Commission now wants to establish a reasonable transition period to caption all non-exempt video programming. The Commission's proposal of an eight year transition period for all non-exempt new programming is unreasonable and does not meet the mandate of Section 713. Eight years is too long for deaf and hard of hearing individuals to spend without such essential access to the world of information and entertainment that the rest of society enjoy. We propose that all news, educational, children's and prime time programming be captioned within a two year period after the effective date of the Commission's rules. All additional non-exempt new programming should be captioned within a period of four years. These timetables should be developed, requiring the larger programmers to caption quicker than the smaller programmers.

II. Transition Schedule for Closed Captioning of Library Programming

Section 713 states that the Commission's regulations must ensure that video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions.

The Commission believes it is inappropriate to mandate captioning of all library programming and seeks comments on whether the rules should require that a percentage of library programming eventually be captioned. Congress' goal was to ensure that video services are accessible to deaf and hard of hearing individuals. Although the statute distinguishes between new programming and library programming, we agree with earlier comments from the National Association of the Deaf that this distinction should be read to apply to the timetables set for captioning of such programming and not to the percentage of programming captioned. True accessibility to video services can only be achieved if the Commission requires that all video programming eventually be captioned. However, due to the volume of library programming, as compared to new programming, the Commission should develop a schedule for captioning that allows for a longer time period. We propose that the Commission develop a transition schedule which requires all education, children's and prime time programming to be captioned within five years. All additional library programming should be captioned within seven years. In addition, we propose, as with new programming, that larger programmers be required to caption quicker than smaller programmers.

III. Exemptions for Categories of Video Programming

Section 713 states that the Commission may only exempt by regulation programs, classes of programs, or services that the Commission determines would be economically burdensome to the provider or owner of such programming. Although the commission is charged with establishing rules in the public interest, it may consider an application for waiver of its rules if

such a waiver does not undermine the Commission's overall policy and is in the public interest.¹⁵ However, there should be no category of programming that is exempt from captioning requirements. Deaf and hard of hearing individuals have a right, the same right as individuals without a hearing loss, to full accessibility to all types of programming, not subject to the undue burden exemptions. Cable access programming should not be exempted from the captioning requirements. As the Commission notes, such programming is of vital importance since it provides important governmental, educational, and community information. For similar reasons, there should be no exemption for instructional programming.

Advertisements must not be exempted from the captioning requirements. The Commission states that, in some advertising, a portion of the information is provided textually or graphically and may be an alternative to closed captions. However, this is not full accessibility. Deaf and hard of hearing individuals have the right to full access and should not have to guess as to the details of the product or service being advertised. Advertisers who pay a substantial amount of money for their advertisements surely can afford the cost of captioning. In addition, there is obviously an incentive for advertisers to caption their programming since it will increase their market to include deaf and hard of hearing customers.

We agree with the Commission that home shopping programming should not be exempt from the captioning requirements. Such programming is similar to advertisements in that the descriptive material necessary for customers to render a decision on whether to purchase a certain product is not fully available in textual form.

¹⁵ See *Wait Radio v. Federal Communications Commission*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *see also* 47 C.F.R. 1.3.

The Commission should not include interstitials and promotional advertisements in their general exemptions. The purpose of such programming is to inform the viewer of late-breaking news or to let them know about an upcoming program. If such programming can have audio components completed quickly, there is no reason why captions could also not be added. All Americans have the right to access to video programming and need this programming to be captioned to make their viewing decisions.

It is quite disturbing that the Commission proposes that political advertisements should be included within the general exemptions. There are few things more essential to a democratic nation than the ability to make an informed decision regarding which candidates to support. Deaf and hard of hearing individuals must have access to such information, whether it be a local election or the election for the President of the United States. An exemption for such programming would be inconsistent with Congress' mandate in enacting Section 713.

With respect to music programming, we propose that music videos be required to be captioned since it is not unduly burdensome to do so, especially considering music videos today are replayed over an extended period of time. Although, background music without lyrics and performances where the music is instrumental may be exempt from captioning requirements, theme music from television programming must not be exempted. Television theme music is easy and economical to caption since it is replayed before every episode. Such music is important since it can add to a deaf or hard of hearing individual's enjoyment of the program and also can assist in explaining the nature of the program. Live performances should also not be included in the general exemptions. Transcripts of live performances are often provided prior to the performance, adding to the ease of captioning. Even if scripts are not provided, live music

performances, as similar to other live programming, should still be captioned so that deaf and hard of hearing individuals have access to the music the rest of society enjoys.

As the Commission correctly notes, deaf and hard of hearing individuals should have access to weather programming for health and safety reasons. Health and safety reasons, however, are not the only reasons such programming must be captioned. Deaf and hard of hearing individuals need to know the weather for the same reasons as the rest of society: to prepare for inclement weather, to arrange business trips, and to simply decide how to dress when they step out of the house. As the Commission itself states, weather programming can be scripted and included in the teleprompter text that is converted to captioning at little cost.


IV. Responsibility for Compliance with Closed Captioning Requirements

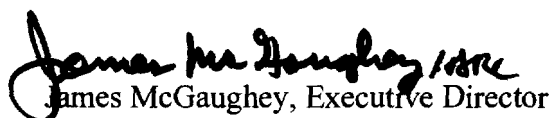
The Commission proposes that video providers should have the responsibility for compliance with closed captioning requirements. However, we propose that program producers and providers share in the responsibility for compliance. Section 713 does refer to "program providers and owners," therefore the Commission arguably has jurisdiction over both providers and producers. Providers and producers themselves can decide in their contract negotiations who ultimately captions the programming.


Conclusion


Congress's goal in enacting the Telecommunications Act of 1996 was to ensure that all Americans have access to video programs and services. Closed captioning is of vital importance to deaf and hard of hearing individuals, since it provides them with essential access to the information they need to fully participate in today's society. Therefore, we urge the Commission

to adopt rules which grant deaf and hard of hearing individuals full access to all video programming.



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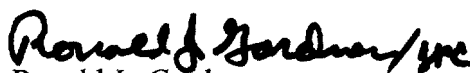

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Respectfully submitted,

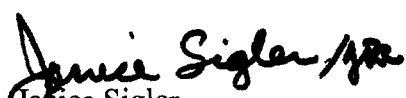

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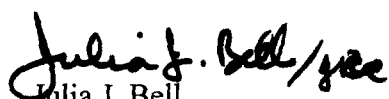

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